

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Jacksonville, Texas

WAL-MART STORES, INC.

Employer

and

Case No. 16-RC-10168

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 540

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: 1/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization involved claims to represent certain employees of the Employer. 3/

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 4/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time employees employed in the meat market at the Employer's retail store located at 1311 S. Jackson Street in Jacksonville, Texas.

EXCLUDED: All other employees, including store managers, assistant managers, overnight managers, support managers, fresh managers, department managers, personnel managers, office clerical employees, professional employees, guards, and supervisors as defined by the Act.

DIRECTION OF ELECTION^{5/}

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a

strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the United Food and Commercial Workers Union, Local 540.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the full names addresses of all eligible voters which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 16 Regional Office, 819 Taylor Street, Federal Office Building, Room 8A24, Fort Worth, Texas 76102, on or before February 2, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by February 9, 2000.

DATED January 26, 2000, at Fort Worth, Texas.

/s/ Martha Kinard

Martha Kinard, Acting Regional Director
NLRB Region 16

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1. The Employer and the Petitioner filed briefs which were duly considered.
 2. The parties stipulated, and I find, that Wal-Mart Stores, Inc. is a Delaware corporation with offices and places of business located throughout Texas where it engages in the business of retail merchandising. The facility involved in this proceeding is a store located in Jacksonville, Texas. During the past 12 months, a representative period, the Employer has purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of Texas and has derived gross revenues in excess of \$500,000.
 3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
 4. Petitioner seeks to represent all full-time and part-time meat processors and meat sales associates who work in the Employer's meat market at its Jacksonville, Texas store. Alternatively, Petitioner is willing to represent only meat processors who are in the meat market. The Employer takes the position that the unit sought by the Petitioner is inappropriate and urges that the only appropriate unit should include all store associates. The Employer and the Petitioner stipulated, and the record supports, that all store managers, assistant managers, overnight managers, department managers and support managers are supervisors within Section 2(11) of the Act and should be excluded from any unit found herein. There are approximately nine employees in the unit sought by the Petitioner and approximately 360 in the unit urged by the Employer.

The Jacksonville store operates twenty-four hours a day and is considered a supercenter facility for the Employer. In its operation, the store is subdivided into four general areas of merchandise, namely hard line (health and beauty aids, cosmetics, paint, hardware, automotive), home line (bedding, housewares), food, and apparel products. The food area includes meat, deli, produce, dairy, and bakery departments. The other three areas encompass departments that are broken down by product groups such as housewares, clothing, health and beauty aids, electronics, paint, hardware, furniture, sporting goods, automotive, photo center, pharmacy, and vision center. The record reflects that the Employer also leases store space to entities such as McDonald's, a fast food restaurant, All-Tel, a cellular phone company, and an optical shop and an eye doctor. None of individuals working for any of these leasing entities are employees of the Employer.

The hierarchical structure of the Jacksonville store is as follows: David Eckermann is Store Manager and, in his position, he has overall responsibility for the store's operations, merchandising, and personnel. Robert Reno is the store's Co-Manager. Both Eckermann and Reno oversee four assistant managers who work during the day, two assistant managers who work overnight, two support managers, and all department managers who directly supervise the store's twenty-four product departments. The four day assistant managers are Food Assistant Manager Joyce Emerson, Hard Lines Assistant Manager Kerry Kilpatrick, Apparel Assistant Manager Vanesa Smith, and Home Lines Assistant Manager Nicole Grammer. The two overnight assistant managers are Danny Bryan and Sandra Garcia and both of these assistant managers oversee all of the departments during store evening hours. Occasionally, an assistant manager will be the only management representative on duty at the store. This occurs when there is no overlap in scheduling or when other assistant managers are ill or at lunch.

Paul Mendez is a department manager who reports to Food Assistant Manager Emerson. Mendez is the manager for the meat and deli department and is responsible for ordering food products and scheduling employees for these two areas. Prior to September 1999, the meat and deli departments were under separate supervision and the deli department was aligned with the bakery department. In September 1999, the Employer consolidated the deli and meat departments. The only change reflected in the record that resulted from the consolidation is the Employer placed meat market and deli employees under the direct supervision of Mendez. The deli (department 80 and 97) and the meat market (department 93) areas remained separate cost centers.

In addition to directing the work of all meat market and deli employees, Mendez also prepares performance evaluations for these employees. Mendez receives input and assistance from Co-Manager Reno and Assistant Manager Emerson when preparing these evaluations. Reporting to Mendez are a deli lead associate, a meat lead associate, seven meat processors, and ten sales associates. Of the ten sales associates, one is primarily a meat wrapper and one is a cleaner in the meat market. The remaining eight sales associates work primarily in the deli. Mendez and the lead meat associate order all of the meat products for the meat market and the lead deli associate orders prepackaged meat for the deli. The record reflects that on occasion, the lead deli associate and the lead meat associate will assist each other by submitting each other's product orders.

The departments that handle food products for the Employer are located in one general area of the store. The bakery department is located near the front of the store. Adjacent to the bakery department is the produce department. The meat market is located next to the produce department along the wall of the store. The meat holding area and the meat prep area is flanked on each side by a frozen meat freezer and a meat, dairy, and deli cooler. All frozen products for the store are kept in this freezer when not in cases on the sales floor. When frozen product bins need to be restocked, associates from the respective deli, dairy, and meat departments come to this freezer to obtain the needed stock. The meat market is primarily responsible for filling the frozen meat cases and maintaining these foods in the freezer and display bins.

Along the wall in front of the meat prep area are meat cases for prepackaged poultry, pork, seafood, ground beef, and fresh meat products. The meat, dairy and deli cooler is directly behind the “97 Wall”, an area where cases are stocked with prepackaged lunch meat, frankfurter, and sausage products. Although the stocking of meat products in “97 Wall” cases is the primary responsibility of the lead meat associate, deli sales associates help stock these cases. Next to the meat, dairy, and deli cooler and across from an adjoining fire exit and hallway are a deli cooler, a deli prep area, and a deli service area. Directly in front of the deli cooler and the deli prep area are two cases for cheese products. The stocking of deli cheese products in these cases is the primary responsibility of the deli sales associates.

In the deli service area lunchmeats are stocked and sliced for customers upon request. Adjacent to the deli service area is an area used by the deli to prepare fried chicken, chicken tenders, rotisserie chicken, and salads. Deli sales associates use commercial fryers and roasters to prepare this food and place this prepared food into cases located in front of the deli service area. Meat market employees do not operate the commercial fryers. Deli sales associates wear blue aprons in their work area. Meat market employees wear white smocks and plastic aprons when working in their respective area. Deli sales associates spend a majority of their time preparing deli foods and servicing customers at the deli service counter. The meat market does not have a designated service area and customers are not allowed to enter the meat prep area.

Meat processors are responsible for cutting boxed meat, assisting in the stocking of meat cases, handling prepackaged and frozen meat, cleaning the meat prep area, and performing customer service in the meat market sales area. When not involved with meatcutting, meat processors assist in unloading food products that arrive by truck. Meat processors are scheduled to work shifts ranging from 5:00 a.m. to 6:00 p.m. during the week and 9:00 a.m. to 6:00 p.m. on weekends. The deli service area is open between 7:00 a.m. and 9:00 p.m. and one deli sales associate reports to work at 6:00 a.m. to set up the deli. All meat market employees work 40 hours a week and all are considered full-time employees. Over forty percent of the remaining employees at the store are considered part-time employees. The record reflects that meat processors make between \$11 and \$12 an hour, whereas meat (meat wrapper and meat cleaner) and deli sales associates make between \$6 and \$7 an hour.

In addition to the seven meat processors who handle and cut boxed meat, the meat market is also staffed by one sales associate who is primarily responsible for wrapping meat cut by the meat processors. In addition to performing these wrapping duties, this sales associate also fills meat cases on the sales floor, rotates and/or removes meat based on its age and appearance, and assist customers who come into the meat market area. The record reflects one instance a few weeks before the hearing where a deli sales associate was given thirty minutes of wrapping training by a meat processor. The record reflects that this deli employee never returned for further instruction. Aside from this one instance, store employees in other departments do not assist the meat wrapper with meat wrapping duties. The Employer also employs in its meat market a sales associate who is responsible for cleaning the meat cases, counters and machines used by the meat processors. This associate also fills meat cases as needed during the evening hours. The record reflects that on occasion, deli sales associates assist in filling meat cases during the evening hours when no one else is available or when the cleaner needs assistance. Notwithstanding this occasional assistance, meat market employees retain primary responsibility for filling meat cases.

Fresh and frozen meat products are delivered to the store by truck along with deli, dairy, and produce products. Although these trucks arrive at various times of the day, they always park in the receiving area in the back of the store. When this occurs, the receiving manager calls all fresh product and dairy managers over the store intercom to send employees to the back room to unload the truck. When the truck arrives after 6:00 p.m., the meat market cleaner and available deli sales associates are sent to help unload the truck. The record reflects that meat processors spend approximately 10% of the workweek unloading food products from trucks. When fresh, dairy and produce associates arrive at the receiving area, they pull pallets off the truck. As each pallet is taken off the truck, the associate who pulled it will take it to the cooler or freezer in its proper department. There are racks in the coolers and freezers to stack the food products and the food products are stored there until they are ready for display on the sales floor.

The meat market sells a variety of meat products that arrive at the store partially processed. The prepackaged meat received by the store includes lunchmeat, ground beef, ground turkey, whole chickens, cut-up chickens, filets, brisket, frozen chicken, and sausages and frankfurters. The store also receives boxed red meat of various weight and size. When not kept in the cooler or freezer, lunchmeats are placed on shelves in the deli service area and along the "97 Wall" and the frozen meat is kept in cases and bins located throughout the meat market. Aside from frozen chicken used by the deli, the record reflects that the meat market is primarily responsible for handling frozen meats. Meat market employees also handle both unfrozen prepackaged meat and boxed meat. All meat is kept in the same cooler and freezer when not in display cases or bins. From a sales standpoint, approximately 70 percent of the meat received by the store from food processors is prepackaged and approximately 30 percent is boxed red meat. Some cross merchandising occurs at the store when products from various departments are placed with products from other departments to help increase sales. The record reflects that a

small amount of cross-merchandising takes place in the meat market with picnic and related products being sold with meat products.

On a daily basis, meat processors come in at 5:00 a.m. and determine what cuts of meat are required for the day. Meat processors examine each respective meat case and determine which cases require more meat product. Meat processors prepare “cutting lists” which are used to notify other meat processors how much and what type of meat needs to be cut. All boxed meat is labeled and meat processors remove the proper portions from the respective boxes as dictated by the cutting lists. Meat processors then slice, cut, and trim meat portions, package it, label it, and put it in one of the fresh meat cases on the sales floor. Meat processors use tools such as blocks, saws, tenderizers and grinders when cutting meat portions. The record reflects that store employees in other departments do not use any of the cutting tools and equipment located in the meat market.

The record reflects that meat processors must be familiar with the angles to cut the meat and how to position the meat so that the most efficient cuts may be obtained from each piece of boxed meat. When cutting the meat, meat processors determine what pieces can be carved from the boxed portion they are handling. The record reflects that meat processors utilize these cutting skills in order to maximize profit for the Employer in eventual meat product sales. Mistakes in cutting can lead to wasted meat and cuts that are less expensive. Likewise, meat processors factor in what cuts will be physically appealing to customers on the sales floor.

Placement of wrapped meat is determined by modulars. Modulars are layouts used by meat processors which guide the meat processors as to where and how much meat product is to be placed in displays, cases, and bins. Meat processors also grind the trimmings resulting from their meat cutting into ground beef that is wrapped and put on the sales floor. On occasion, particularly during holidays, meat processors will handle special meat requests from customers. Meat processors spend 6 hours of their 8-hour shifts cutting meat into smaller cuts. The employees in other departments do not cut meat or grind meat or operate meat market equipment.

Store Manager Eckermann conducts general meetings for all store employees three times a day. All employees attend these meetings unless they are with a customer or unable to leave the work they are performing. These meetings are held in the store and typically consist of discussions about store events, sales, and performance. All employees are also required to observe the Employer’s “ten foot rule”. This rule requires all employees to greet and assist customers who come within ten feet of their person. All employees are subjected to the same hiring process and all employees submit applications through the Employer’s personnel office. All new employees go through the same general orientation process. This process includes a review of company history and benefits, computer-based lessons that pertain to an associate’s newly-assigned department, and a tour of the store. After completion of the orientation process, all employees are assigned a sponsor from their assigned departments for the purpose of assisting the new employee with work-related questions or concerns. One meat processor testified at the hearing that

he had six months of specialized training with a prior employer before he could begin making the types of specialty meat cuts he makes for the Employer. This meat processor also testified that he was aware of other meat processors having significant prior meat cutting experience before the Employer hired them.

All store employees park in the same lot and all employees use one of two timeclocks located near the employee lounge when coming and going from work. All store employees work different shifts throughout the day, but all work 8-hour shifts. All store employees use the employee lounge when taking their 15-minute breaks or their 1-hour lunch break. All store employees are paid on an hourly basis and all employee paychecks are issued from either the cash office or outside the managers' offices on Friday mornings. All store employees have lockers located in the same area of the store.

All store employees are eligible for merit raises based on job performance. The store manager, the co-manager, the assistant managers, and respective department managers are all involved in determining which employees receive merit raises. All store employees are eligible for the same medical, disability, and life insurance benefit programs. After seven years of service, employees may also participate in profit sharing. All store employees are eligible for stakeholder bonuses upon hire. Stakeholder bonuses are based on the total revenue a store derives during the year and profit sharing contributions are calculated based on total store profit during the year.

When an employee notifies management of an interest to work in another department, the respective employee is interviewed if there is an opening. The record reflects that within the past three years, seven employees have transferred into the meat market. The record also reflects that two of these employees have since quit their jobs, one has transferred back to his original department, a fourth was promoted out of the meat market, and a fifth already had previous experience working in the meat market as a meat processor. The record does not reveal any other instances of meat market employees transferring out of the meat market to other store departments.

The record reflects that employees in the various store departments are generally trained to be familiar with products they sell, using computer-based lessons to help with this training. With regard to meat processors, the record reflects that these employees require special training to learn how to create meat cuts and how to use the meat cutting tools that are required for making these cuts. The meat wrapper must also be trained regarding various cuts of meat so that the wrapper can accurately label the meat before it is placed on the sales floor. Although the Employer argues in its brief that it utilizes a 75-day training plan for meat market and deli employees and references two employees who had no prior meatcutting experience before transferring to the meat market, the record does not reveal any evidence of the Employer providing new meat processors any specialized meatcutting or equipment training. Likewise, the record does not reflect any evidence that the Employer provides any meatcutting or meat wrapping training to deli or other store employees.

The record reflects some interchange occurring between meat market employees and employees from other departments. Deli sales associates will occasionally assist the meat market in stocking prepackaged and fresh meat in cases and bins and meat processors will occasionally help deli sales associates remove frozen meat products from pallets when these employees are stocking this product in the freezer. The record reflects a few instances where the lead meat associate assisted customers at the deli service counter and another instance where a meat processor helped slice meat for customers while temporarily covering this deli service area. Deli sales associates have occasionally assisted the meat market with product markdowns when meat market employees are unavailable and have occasionally picked up returned items for the meat market that are left at registers located at the front of the store. Again, notwithstanding the occasional assistance provided between the meat market and deli, the record reflects that meat market employees and deli employees spend a majority of their work time in their respective work areas. Moreover, there is no record evidence of such assistance being provided by associates from other store departments.

Historically, the Board has found that employees in meat departments constitute presumptively appropriate units because these employees “exercised a broad range of traditional meatcutter skills marking them as craftspeople.” *See, e.g., R-N Market*, 190 NLRB 292 (1971); *Big Y Foods, Inc.*, 238 NLRB 855 (1978). As boxed meat has become more prevalent and meatcutters are no longer handling carcass meat, the Board has concluded that since meatcutters no longer need to perform all the higher skill level tasks associated with their craft status, their skill level did not warrant applying the presumption that a unit limited to meat department workers was appropriate. *Ashcraft Market*, 246 NLRB 471 (1979); *Great Day, Inc.*, 248 NLRB 527 (1980). The Board, however, has held that meat department employees may still constitute a separate appropriate unit as measured by the Board’s traditional community of interest factors. *Wal-Mart Stores, Inc.*, 328 NLRB No. 126 (1999).

In determining whether a petitioned-for unit of meat department employees constitutes an appropriate separate unit, the Board applies a community of interest test. Specifically, the Board examines factors such as **1)** the portion of the employer’s meat department business involving boxed meat; **2)** the level of specialized meatcutting skills required to process the boxed meat; **3)** the level of training of meatcutters; **4)** the portion of the unit engaged in skilled meatcutting work; **5)** separate supervision; **6)** the degree of interchange and transfer between the meat department and the rest of the store; and **7)** the wages and benefits paid to the meat department employees. *Scolari’s Warehouse Markets, Inc.*, 319 NLRB 153, 158 (1995); *Super K-Mart Center*, 323 NLRB 582, 586 (1997).

None of these factors, individually, is determinative; all are weighed in deciding whether a sufficient community of interest exists so as to include separate, identifiable groups of employees in an appropriate unit. Further, the Act allows a union to petition for an appropriate unit, and does not require it seek the most appropriate unit, even when a different than petitioned-for unit might be more appropriate. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); *Omni-Dunfey Hotels*,

Inc., 283 NLRB 475 (1987); *Federal Electric Corp.*, 157 NLRB 1130, 1132 (1966); *Capital Bakers*, 168 NLRB 904, 905 (1967). Upon consideration of all these factors and the entire record, I find that the meat department employees have a community of interest separate from those of other store employees and constitute an appropriate unit found herein.

Critical to my determination are factors addressing the level and depth of meatcutting skills exercised by the Employer's meat processors and how these employees handle the boxed red meat that arrives in the meat department for eventual sale to customers. The record reflects that 30% of the Employer's meat sales are derived from boxed red meats. This figure is comparable to those percentages of boxed meat sales found to be a substantial portion of an employer's meat business in *Scolari's Warehouse Markets, Inc.*, 319 NLRB at 157 and *Super K-Mart Center*, 323 NLRB at 587. More importantly, record evidence shows that meat processors spend approximately 75% of their time at work cutting boxed meat and preparing it for sale to customers. This figure does not include the additional 10% of time spent by meat processors to unload the meat from the trucks. Hence, these percentages reflect that meat processors spend a significant part of their time handling and cutting boxed meat, particularly when compared to the time meat processors spend meatcutting at other stores of the Employer. *See, e.g., Wal-Mart Stores, Inc.*, 328 NLRB No. 126, slip op. at 2.

The boxed meat received by the Employer's meat market includes various large portions of red meat. The evidence reveals that meat processors use their knives and meatcutting equipment to create the optimum number of cuts from these portions. The record evidence shows that meat processors use various angles when cutting different kinds of meat and must determine what pieces can be carved and derived from a particular piece of meat so maximum profit can be obtained from the boxed meat. Mistakes in cutting can lead to wasted meat and less favorable prices and profits for the Employer. Likewise, the evidence demonstrates that meat processors must determine what cuts will be physically appealing to customers.

As referenced above, occasionally, particularly during holidays, meat processors custom cut meat pursuant to special orders made by customers. Such custom meatcutting can include preparing crown roasts, cutting meat to requested thickness, or carving hams. Given the skill required to make specialty cuts and the time spent on obtaining these cuts, the evidence reflects that meat processors apply highly specialized meatcutting skills on a routine and constant basis. *Super K-Mart Center*, 323 NLRB at 587. Additionally, the evidence demonstrates that meat processors exercise "skills which are distinct from the skills" of other store employees and utilize equipment unique to the meat department. *Scolari's Warehouse Markets, Inc.*, 319 NLRB at 156; *Wal-Mart Stores, Inc.*, 328 NLRB No. 126, slip op. at 4.

In its brief, the Employer argues that meat processors do not exercise the same level of skills or exercise the same level of discretion in cutting meat as did the meatcutters in *Scolari* and *Super K-Mart Center*. Notwithstanding these arguments, the evidence shows that the meat processors still exercise specialized skills and use a high level of

knowledge unique to meatcutters in performing their jobs. Meat processors, for example, still must observe the different angles unique to different cuts of meat and must be familiar with the numerous types of cuts that can be drawn from different types of meat. Moreover, even assuming *arguendo* that the degree of meat processing exercised by meat processors and the meatcutters in *Scolari* and *Super K-Mart Center* is not the same, meat processors spend significantly more time engaged in applying their meatcutting skills than do their counterparts in *Scolari* and *Super K-Mart Center*. Accordingly, the evidence demonstrates that meat processors exercise a high level of meatcutting skills.

The record establishes that approximately 75% of the petitioned-for unit are meat processors. This percentage reflects that a substantial portion of the unit engages in skilled meatcutting work. *Wal-Mart Stores, Inc.*, 328 NLRB No. 126, slip op. at 4. Record evidence indicates that meat processors have a high level of training and skill. The record evidence further reflects that sales employees in other departments are only required to develop a working knowledge of the products that they are selling. Meat processors, on the other hand, are required to create meat products using special skills that will later be packaged and sold on the sales floor. The record reflects one meat processor witness had taken a six month training course with a prior employer before he was able to begin cutting meat and that he was aware of the Employer's other meat processors acquiring significant meatcutting experience before beginning employment with the Employer. The record is bereft of evidence demonstrating that the Employer provides any meatcutting or meatwrapping training to other store employees regarding meat market operations.

Regarding employee interaction, the record reflects that meat, deli, dairy, and grocery department employees work together in unloading refrigerated and frozen food products for each others' departments. Likewise, record evidence reflects that deli employees occasionally help fill meat cases during off-hours and on a temporary basis when the meat market is shorthanded and meat department employees will occasionally service customers in the deli. The record also reflects that meat market employees interact with other store employees on a limited basis at general store meetings, in the employee lounge, or at the employee time clocks. While the foregoing demonstrates interaction between meat market employees and other store employees, this level of interaction is not considered substantial. *Wal-Mart Stores, Inc.*, 328 NLRB No. 126, slip op. at 5; *Super K-Mart Center*, 323 NLRB at 588. The record reveals, and the Employer does not dispute, that meat market employees spend a majority of their time in the meat market performing meatcutting activities and deli employees spend the majority of their time in their deli work areas. The interaction between these two groups of employees does not outweigh the fact that they spend the majority of their daily activities working apart from each other.

Likewise, record evidence demonstrates there have been a limited number of permanent transfers associated with the meat market. At the hearing and in its brief, the Employer asserted that out of eighty-four store transfers, seven employees transferred in and four employees transferred out of the meat market, with some of the same employees being involved in multiple transfers. Notwithstanding the number of transfers, the record

reflects that two transferring employees have since quit their jobs, one has transferred back to his original department, a fourth was promoted out of the meat market, and a fifth previously worked in the meat market as a meat processor. Aside from these transfers, the lack of significant permanent transfers emphasizes the lack of community of interest between meat market employees and other store employees. *Wal-Mart Stores, Inc.*, 328 NLRB No. 126, slip op. at 4; *Super K-Mart Center*, 323 NLRB at 588.

Although the record reveals that all employees are eligible for similar benefits and bonuses, the record shows that meat processors are paid at a rate significantly higher than the wage rate paid by the Employer to sales associates. This disparity in wages between meatcutters and other store employees has been found by the Board to be a significant factor establishing the meatcutters' separate community of interest. *Wal-Mart Stores, Inc.*, 328 NLRB No. 126, slip op. at 4; *Super K-Mart Center*, 323 NLRB at 588. In its brief, the Employer argues that meat processors and meat sales associates do not receive wages comparable to other experienced store associates and that unlike the *Scolari* and *Super K-Mart Center* cases, the meat processors were not the highest paid employees in the store. Aside from the deli and meat market wages rates, no other wage information was presented at the hearing demonstrating that meat processors were not paid high wage rates as compared to their fellow store employees. Even if meat processors were not the highest paid employees in the store as the Employer asserts, such a factor does not outweigh their high wage rate as compared with the general store population. *Wal-Mart Stores, Inc.*, 328 NLRB No. 126, slip op. at 4.

Finally, the foregoing evidence demonstrates that the two meat sales associates who perform meat wrapping and meat market cleaning duties, respectively, should be included in any unit found appropriate herein. The meat market wrapper wraps meat that is cut by the meat processors. The meat cleaner cleans all of the counters, bins, tools, and equipment used by the meat processors. Additionally, both the wrapper and the cleaner fill meat cases in the meat market. Based on their day to day work duties, the record shows that these two employees are fully and functionally integrated with the meat processors in the operation of the meat market. *Super K-Mart Center*, 323 NLRB at 588. Specifically, the meat wrapper sales associate and the meat market cleaner "take the flow of work from the meatcutters" and perform supporting and ancillary functions to meat processors in making the product available to the customers. *Id.* at 588.

While common benefits and bonuses among all store employees or the common supervision of the meat market and deli employees might form the basis for finding a broader unit appropriate, if sought, it is the Employer who must establish that the petitioned-for narrower unit is inappropriate. *Executive Resource Associates, Inc.*, 301 NLRB 400, 402 (1991); *Omni-Dunfey Hotels, Inc.*, supra. Based on the above and the record as a whole, I find the Employer did not establish that the petitioned-for unit is inappropriate and I find that there is a sufficient community of interest to require the inclusion of the meat processors and meat sales associates in the unit sought by the Petitioner. Although the evidence reflects there is general interaction among employees at the Employer's store and that employees share common benefits and bonuses and, to a certain limited extent, common supervision, these considerations do not outweigh the

other factors such as the substantial time meat department employees spend in handling and cutting meat or the unique and special skills they exercise when performing these job duties. Accordingly, I find that the petitioned-for unit is appropriate.

5. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

440-1760-9167-4833